

**BOROUGH OF MOUNTAINSIDE
PLANNING BOARD
JOHN TOMAINE, CHAIRMAN**

Regular Meeting [Virtual]

April 27, 2021

OFFICIAL MINUTES

Adopted 5/25/21

Chairman Tomaine called the regular meeting to order at 7:00 pm.

ROLL CALL

Mike Disko, P.E.	Steve Matlin
John Tomaine, Chairman	Thomas Jakositz
Mayor Paul Mirabelli	Karen Dillon Alt. #1(Absent)
Councilman Steven Matejek	Victor Kostin, Alt. #2
Ted Zawislak, Vice-Chairman	Vincent K. Loughlin, Esq., Board Attorney
Todd Garran	John T. Chadwick, PP, Board Planner
Thomas Parker (Arriving at 7:09 pm)	Theresa Snyder, Board Clerk

Chairman Tomaine read the statement indicating the meeting was being conducted according to the Sunshine Law, the Municipal Land Use Law requirements, in compliance with the CDC and the DCA for emergency meeting protocol, and the recording of the Minutes as required by law. He then led the flag salute to the American flag and board members identified themselves for the record.

MINUTES

On motion by Mr. Zawislak, seconded by Mr. Garran, the minutes for the Regular Meeting of March 23, 2021, were adopted based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran, Mr. Matlin, and Mr. Kostin
Nays:	
Not Eligible:	Mr. Parker, Mr. Jakositz, Mayor Mirabelli, and Councilman Matejek
Abstain:	
Absent:	Ms. Dillon

RESOLUTION PB 21-R12
CASE NO.: 21-05; WARD
337 CHERRY HILL ROAD
BK: 5.12 LT: 7
Represented By: Stephen F. Hehl, Esq.
R-2 ZONE
Approved: 3/23/21

On motion by Mr. Zawislak, seconded by Mr. Kostin, the resolution was memorialized based on the following roll call vote:

Roll Call:
Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,
Mr. Matlin, and Mr. Kostin
Nays:
Not Eligible: Mr. Parker, Mr. Jakositz
Abstain:
Absent: Ms. Dillon

RESOLUTION PB 21-R13
CASE NO.: 21-07; KING
313 INDIAN TRAIL
BK: 15.13 LT: 2
Represented By: Stephen F. Hehl, Esq.
R-2 ZONE
Approved: 3/23/21

On motion by Mr. Zawislak, seconded by Mr. Kostin, the resolution was memorialized based on the following roll call vote:

Roll Call:
Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,
Mr. Matlin, and Mr. Kostin
Nays:
Not Eligible: Mr. Parker, Mr. Jakositz
Abstain:
Absent: Ms. Dillon

Planning Board

CASE NO.: 21-06; POMBAL BUILDERS

350 SUMMIT ROAD

BK: 7.07 LT: 26

R-2 ZONE

Mr. Al Andril, Esq. continued in his representation of the applicant. He informed the board that he and Mr. Quinn considered the comments and suggestions made by the board. He contended the revised plans submitted more than 10 days prior to the hearing addressed all of the issues raised at the meeting held on March 23, 2021.

Mr. Thomas Quinn remained under oath. He presented EXHIBIT A-1-Revised Plans-dated 4/16/21. Mr. Quinn referred to Sheet 3-Site Plan/Landscaping Plan. Mr. Quinn testified that the applicant agreed to add an additional row of plantings along Lot 25. The applicant proposed staggering the plantings in the retaining wall which would include flowering bushes and evergreens. The applicant also proposed the replacement planting of 14 shade trees around the perimeter of the parcel. The applicant proposed an increase to the site distance and would move the street lights out of the right of way.

Mr. Quinn referenced Sheet 5- which depicted a supplemental hydraulic calculation showing the drainage moving from left to right. Mr. Quinn met with Mr. Disko on site to discuss directing runoff to Summit Road. Mr. Quinn opined that the parcel was a 1.5-acre site in which 1.3 acres of runoff was expected to be directed to Summit Road.

Mr. Quinn presented EXHIBIT A-2-Grading and Drainage-4/27/21. He testified that the drainage provided an intercept take at the high spot to allow a split of the runoff. The system directed the runoff to an inlet and into a manhole on Summit Road. This proposal would assume another acre of runoff from off site. He opined that there would be no impact on adjoining property owners.

On question of Chairman Tomaine, Mr. Quinn testified that the steep slope calculations were addressed in the EIS and on EXHIBIT A-1.

Mr. Loughlin recommended the board address the letter from the county engineer.

Mr. Quinn testified that the comments of the street off-set were satisfied according to Mr. Fishinger's review of the scale and positioning of the road.

On question of Mr. Zawislak, Mr. Quinn testified that items A-1 from the Land Development Ordinance Sec. 1003(z)(4) were satisfied as the question was previously raised by Chairman Tomaine.

Mr. Disko clarified that this application was for a major development, as such, off site drainage must be reduced. He said the applicant's plans achieved that. The offsite drainage will accept

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80 % of the runoff that the southeast corner collects. Mr. Disko referred to the 4/16/21 plan which provided the north of the property offsite drainage to flow to the property and bypass the property. He explained that Lots 25, 9, and 29 would receive the runoff reductions equally. He stated 90-95% of the runoff from the north would not reach those lots. He referred to EXHIBIT A-2 as going above and beyond in the reduction of run-off.

On question of Mayor Mirabelli, Mr. Disko said the water would flow to a storm sewer that will tie into the Union County storm sewer.

Mr. Loughlin suggested that the board consider testimony concerning the obligations recorded at the March meeting for the maintenance of any easements and the establishing of a homeowner's association. Other considerations were moving the street lights, installing a fire hydrant, and designating the cul-de-sac as a private road.

Mr. Disko stated in speaking with the applicant, the applicant would assume the responsibility of those items. Mr. Disko did say the Borough would assume annual responsibility for the stormwater system.

Mr. Andril contended was a County issue. He stated his client was prepared to provide frontage along the property. The applicant was not in favor of conditioning the road as a private drive. Mr. Stephen F. Hehl, Esq. was retained to craft a developer's agreement.

On question of Mr. Loughlin, Mr. Andril confirmed the cul-de-sac would be a public street and the homeowner's association would maintain the drainage.

Mr. Disko added the applicant would be required to add landscaping to the right-of-way and lighting.

Mr. Andril specified that each issue would be identified in the rules, regulations and bylaws.

Mr. Chadwick asked if there was a way to preserve some of the trees between the applicant's lot and Lot 25 without altering drainage. He questioned if the pavement could be shifted to flatten out the grading in an effort to preserve trees.

Mr. Quinn answered Mr. Chadwick by referring to Sheet 3 dated 4/16/21. The proposed cart way was required by RSIS. The plans allowed for 8 ft. on both sides. The plans allowed for an additional 6 feet of ROW and gave a decent stroke for access to the driveway. Mr. Quinn testified that even if the pavement was shifted, it would not eliminate the need for the retaining wall. He opined that it would not improve the design.

Mr. Chadwick was satisfied with Mr. Quinn's response.

Mr. Garran raised concerns about the runoff onto Lt. 25 and the water moving toward Summit Road. Mr. Quinn testified that the water from the site would be collected and brought into the county system.

On question of Mr. Disko, Mr. Quinn confirmed that everything was dictated by the elevation into the drainage. Mr. Quinn testified that if they tied in further down the street, they could get a lower invert, but it would not be cost effective.

On question of Chairman Tomaine, Mr. Quinn testified that they would need to cut 2,000 cu. yds. of soil and fill 900 cu. yds. He opined that keeping the road high was a good use of materials. Further to Chairman Tomaine's question, Mr. Quinn testified that the soil brought onto the site would be controlled fill.

The meeting was opened to the public for questions.

Ms. Tina Schmidt, 359 Darby Lane, was sworn in. Ms. Schmidt expressed a concern about the amount of flooding the properties located on Lot 9 and Lot 29 receive with no improvements to the subject property.

Mr. Quinn testified that the site improvements would not impact lots 9 and 29 because the subject property would collect all of the runoff on the property.

Ms. Schmidt also commented on the impact of cutting down 51 trees. To which, Mr. Quinn responded that they would be cutting down 51 trees; however, that would allow the applicant to mitigate drainage through stormwater.

Mr. Disko added that although the removal of 51 trees is a valid consideration, the Ordinance did not require tree replacement. He further offered the consideration that the plans were revised to collect runoff from lot 25 in an effort to reduce the impact of these improvements.

Mr. Quinn showed where the replacement trees were proposed on the site plan.

In response to Ms. Schmidt's question, Mr. Quinn testified that the lot areas could not be changed, and the homes built on the parcels would have to comply with the Ordinance.

Mr. Disko referenced Sheet 3 of 10 while explaining that the Borough standard is that a house area should not exceed 15% of the lot area. Each of the homes built on the proposed lots would be brand-new builds not a retro-fitted older home.

Mr. Quinn added that the plans depicted the largest house footprint allowed by Ordinance.

Mr. David Pasternak, 348 Summit Road, was sworn in. He testified that nine months ago, he moved to Mountainside. He lived on Lot 25. He did not like the proposed road along his back

yard. He questioned if the existing lot could be subdivided into two lots which would not need a road. Mr. Quinn responded that the lot was too narrow to fit two lots.

Mr. Pasternak expressed his concern that the cutting down of the mature trees to replace with smaller trees was upsetting. He further expressed that he was not happy with the proposed street that would abut his backyard. He testified that he moved to Mountainside nine months ago to build a life.

Mr. Chadwick suggested that the arborvitaes should be no less than 6 ft. at the time of planting. He requested that Mr. Quinn make the landscape plan more organic. Mr. Chadwick also asked if the driveway could be moved off of the bulb of the cul-de-sac. To which, Mr. Quinn replied that they did not want to set back the houses further because it would encroach into back yard space.

On question of Mr. Pasternak as to whether headlight glare would invade his back yard, Mr. Quinn said light from Lot 2 may sweep across his lot.

On question of Mr. Garran about the intensity of the use, Mr. Quinn explained that the lot was going from 1 residential lot to 3 residential lots. Each home would have a two-car garage. The RSIS projects that there would be eight trips to thirty trips a day; therefore, the impact is very minimal.

On question of Mr. Garran, Mr. Disko confirmed that Lot 25 would become a corner lot. This would become an existing condition, but would not create a variance.

The meeting was open to the public. With no comments from the public, the public portion was closed.

Mr. Andril gave his summation.

Mr. Garran raised concern with the intensity of site creating an undue burden on Lot 25. He was not in favor of the application, but he would consider a two-lot subdivision.

Mr. Zawislak agreed with Mr. Garran. He affirmed that the plan met the ordinance, but placed undue burden on the existing lots. He was against the application.

Mr. Kostin agree with Mr. Garran and Mr. Zawislak. He was against the application.

On question of Mr. Disko as to tree loss, Mr. Chadwick replied that they needed to get the water to Summit. He could not suggest a better engineering solution. Mr. Chadwick added that although the Borough did not require tree replacement, Mr. Quinn had agreed to re-work the landscaping buffer.

On question of Mr. Loughlin, Mr. Disko confirmed that the subdivision was conforming to the ordinance and the lots would be without the need of variance.

Mr. Loughlin cautioned the Board that according to the Municipal Land Use Law, an application cannot be denied if it is a conforming subdivision. He advised the Board to explore public health and safety issue of the neighboring home owners. He further advised that the neighbor's testimony was not a controlling legal standard.

Mr. Loughlin stated the following conditions to approval:

1. Existing structures on the property should be removed
2. The applicant will submit subdivision of plats and monuments
3. The applicant will post a bond to cover the cost of affordable housing and sewer connection fees
4. The applicant will install a fire hydrant if it is required.
5. The applicant will obtain any government permits.
6. The applicant will obtain any approvals needed for easements.
7. The applicant will work with both the board and Borough attorney on a developer's agreement.
8. The applicant will establish a homeowner's association.
9. The applicant will resolve all agreements prior to filing for building permits.
10. The plans being approved reflect the revisions on the plans dated 4/16/21.
11. The applicant will submit staging plans to the engineer.
12. The applicant will submit any and all drainage issues to the engineer.
13. The applicant will include the street lights in the homeowner's association.
14. The applicant will submit plans for the cul-de-sac as a public street as per the plans dated 4/27/21.
15. The applicant will comply with the drainage improvements according to A-2 dated 4/27/21.
16. The applicant will ensure that the street name meets the Borough Ordinance before the subdivision plat is signed.
17. The applicant will include a copy of the resolution to the homeowner and homeowner's association.

On motion by Mr. Zawislak, seconded by Mr. Kostin, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Matlin, and Mr. Kostin
Nays:	Mr. Garran
Not Eligible:	Mr. Parker, Mr. Jakositz
Abstain:	
Absent:	Ms. Dillon

Board of Adjustment

CASE NO.: 21-09; NG CONSTRUCTION

1140 GLOBE AVENUE

BK: 23.03 LT: 8.01

R-2 ZONE

Represented By: Stephen F. Hehl, Esq.

Expiration Date: 7/15/21

Mr. Hehl, Esq. entered his appearance on behalf of the applicant. The applicant was before the board for two minor items. The applicant was seeking variance relief for the installation of a generator and wall signs on the existing building. Mr. Hehl informed the board the generator would be located in a heavily landscaped area off of Globe Ave with no residential properties in the area. The area was selected because of the good amount of buffering. The purpose of the generator was for emergency use. NG Construction works on roadways, and they need to keep functioning in a storm. Mr. Hehl said the applicant would schedule noise testing during off peak hours. Mr. Hehl informed that Board that the company had acquired Tracks Unlimited and needed to include the logo on their building signage. He stated that the sign would not be illuminated. There is a light on the building for security reasons. The normal operation hours were 6 am to 6 pm during the week. Mr. Hehl said the sign would cover approximately 10% of the wall area. The new sign is proposed to be 6 or 7 sq. ft. The applicant has a need for the sign as Tracks Unlimited was a recently acquired business addition to the company, and it would be helpful in locating the business.

On question of Chairman Tomaine, Mr. Hehl said that he views the generator as an accessory structure since the Ordinance is not specific how it would be classified. If it is a structure, then board approval is required.

Mr. Disko and Mr. Chadwick agreed a generator is an accessory structure.

Mr. Scott Woodfield, having a business address of 64 Hukley Road, Metuchen, was sworn in to give testimony. He gave his credentials and was accepted by the board as a witness. Mr. Woodfield testified to the need for communication with Port Authority in the event of a storm. He opined that the location of the generator was best suited for their needs as it was a heavily landscaped area. He opined that they were trying to be good neighbors in the placement of the generator. He testified to the unit complying with all noise requirements. Mr. Woodfield confirmed that he took pictures of the hedge and location of the generator and stated that the generator would be located between the front row of landscape and the fence.

Mr. Hehl referred to EXHIBIT A-1 which showed the existing and proposed signage.

Mr. Woodfield testified the sign was not lit. He said there was a small LED light for security. The proposed sign would shift the existing sign up to allow for the Tracks Unlimited sign. The new signage would give recognition of both companies and allow for better access for those trying to

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locate the building. Mr. Woodfield opined that one variance was needed if both parts of the sign were considered as one sign.

On question of Mr. Zawislak, Mr. Woodfield stated the generator was 100 kW.

The meeting was open to the public. There were no comments from the public.

Mr. Nicholas Graviano, P.P., having a business address of 101 Crawfords Corner Road, Holmdel, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the board as witness. He presented the proposed improvements to be the installation of a generator and update the building signage. He said the applicant was seeking two variances. One was a d(2) variance for the expansion of a non-conforming use and the other was a c(2) variance for the height of the sign. He said the board had the power to grant both variances. He opined the granting of both variances would not present any substantial detriment to the Zoning Ordinance or the public good. In testimony of the sign, Mr. Graviano testified the sign was a modest sized sign which would take 10% of the wall area.

The meeting was opened to the public. There were no comments from the public.

Mr. Hehl gave his summation.

On motion by Mr. Zawislak, seconded by Mr. Kostin, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran, Mr. Matlin, and Mr. Kostin
Nays:	
Not Eligible:	Mr. Parker, Mr. Jakositz
Abstain:	
Absent:	Ms. Dillon

CASE NO.: 21-08; BRITO

561 WOODLAND AVE.

BK: 21 LT: 12

R-2 ZONE

Expiration Date: 6/4/21

Mr. Danny Brito, the property owner, was sworn in to give testimony. He chose to represent himself. He testified that the reason for his board appearance was an increase in F.A.R. The proposed increase of F.A.R. was 26.4% to 28.6%. The proposed addition would be 180 sq. ft.

On question of Mr. Matlin, Mr. Brito explained that the house would fit in to the neighborhood better with his addition. Presently, his second floor was recessed while the neighboring homes

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had flushed second floors. Mr. Brito's home would be 2,365 sq. ft. which is within keeping of the other homes in the neighborhood.

On question of Mr. Zawislak, Mr. Brito confirmed that he wanted to bring the second floor flushed with the first floor.

Chairman Tomaine mentioned the minimum lot area in that zone was 15,000 sq. ft. Mr. Brito's property was significantly undersized at 6,500 sq. ft.

On question of Mr. Zawislak, Mr. Brito said he would like to be granted the variance because he was trying to make his house look nice, and he said it promoted the beautification of the area.

Mr. Disko raised the issue of the property dimensions. The front of the property was wider than the rear of the property. He stated that the property was much narrower than the adjacent properties. Mr. Disko used Sheet A-4 to show that Mr. Brito was trying to make the roof pitch the same. The proposed height of the house with the addition would be ± 26 ft.

The meeting was opened to the public. There were no comments from the public.

On motion by Mr. Matlin, seconded by Mr. Zawislak, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin, Mr. Jakositz, and Mr. Kostin
Nays:	Chairman Tomaine
Not Eligible:	
Abstain:	
Absent:	Ms. Dillon

CASE NO.: BA 21-11; WESSEL

1352 WOOD VALLEY ROAD

BK: 15.02 LT: 3

R-2 ZONE

Represented By: John P. Wyciskala, Esq.

Expiration Date: 8/17/21

Mr. John Wyciskala, Esq. entered his appearance on behalf of the applicant.

Mr. Loughlin advised the Board that prior to hearing the application, the Board needed to determine if the application was a matter of res judicata. The previous application of January 26, 2021, was heard, resolved and may not be raised again. The Board needed to hear why the new application was substantially different in order to move forward.

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Mr. Wyciskala stated that the Wessels purchased the home over nine years ago. He explained that the applicants wanted to expand their home by creating an addition on the first and second floors. The building footprint was not going to change. The applicant's reduced the F.A.R. from 31.1% to 24%. The applicants made significant changes which included the elimination of the 2nd study, the first-floor bedroom and bath.

Chairman Tomaine agreed that the F.A.R. was significantly reduced.

Mr. Disko stated that it was not res judicata and the board should proceed.

On motion by Mr. Matlin, seconded by Mr. Garran, the board deemed the application significantly different than the prior application based on the following roll call vote:

Roll Call:

Ayes: Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran,
Mr. Parker, Mr. Matlin, Mr. Jakositz, and Mr. Kostin

Nays:

Not Eligible:

Abstain:

Absent: Ms. Dillon

Mr. Wyciskala stated he had three witnesses.

Mr. Sean and Ms. Kate Wessel were sworn in to give testimony. They testified that they lived in Mountainside for nine and half years. Both of them have been working from home. They testified the addition would allow for a guest room and laundry room. They testified that the addition is consistent with the neighborhood.

The meeting was opened to the public. There were no comments from the public.

Mr. Michael DeBiasse, having a business address of 1955 Washington Valley Road, Martinsville, NJ, was sworn in to give testimony. He gave his credentials as an architect and was accepted by the board as a witness. Mr. DeBiasse testified the applicant's planned to construct an addition expanding the first floor and garage. There would be a new porch on the front of the dwelling. The second floor would be added over the garage. It would include a bedroom, bathroom, and laundry room. He referred to SHEET A-1 which showed a red dotted line outlining the first floor of the existing house. He used SHEET A-2 which was the submitted plan. Mr. DeBiasse showed where the proposed porch would be located in front of the house. Also, he showed where the addition above the garage would be located. Part of the renovations would include dormers to be situated in the front part of the house. Mr. DeBiasse testified the Wessels significantly scaled back the project. The side addition was reduced. Mr. DeBiasse opined the proposed plans were in keeping with the overall look of the neighborhood.

On question of Mr. Zawislak, Mr. DeBiasse testified the dormers were for decoration on the roof.

Mr. Phillip Abramson, PP, having a business address of 60 Union Street, Newark, NJ, was sworn in to give testimony. He gave his credentials and was accepted by the Board as a witness. Referring to EXHIBIT A-1, Mr. Abramson testified the home was located in the R-2 Zone. The existing lot was undersized and narrow. The property had an existing one car garage. The prior design would give the applicant's over 3,000 sq. ft. of living space. He showed pictures of the existing conditions. Mr. Abramson opined the renovations would allow the staircase to comply with building code. He said the Board had the power to grant relief for the F.A.R. variance. He opined the property was particularly suited for a larger structure and the structure would remain a single-family home. Mr. Abramson opined that homes should be able to adapt to inter-generational households. It is one of the purposes of the MLUL. The applicant's plan advanced the Master Plan. The home was a permitted use in the zone. He opined the F.A.R. was a tool metric to cap the size of the building. He opined the increase of F.A.R. would not be noticed. Mr. Abramson testified that if the lot was conforming, the F.A.R. would not be an issue. He opined the home complied with the height and setback requirements and would be in character with the rest of the neighborhood. He opined there were no detriments. The meeting was opened to the public. There were no comments from the public.

Mr. Wyciskala gave his summation.

On motion by Chairman Tomaine, seconded by Mr. Zawislak, the application was approved with conditions based on the following roll call vote:

Roll Call:

Ayes:	Mr. Disko, Chairman Tomaine, Mr. Zawislak, Mr. Garran, Mr. Parker, Mr. Matlin, Mr. Jakositz, and Mr. Kostin
Nays:	
Not Eligible:	
Abstain:	
Absent:	Ms. Dillon

ADJOURN

The Board unanimously voted to adjourn the meeting at 11:00 p.m.

Respectfully Submitted,



Theresa Snyder
Board Clerk

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